

## Ombudsman's Determination

Applicant	Mr S
Scheme	Pennines Retirement Benefits Scheme ( <b>the Scheme</b> )
Respondent	Dalriada Trustees Limited ( <b>Dalriada</b> )

## Outcome

1. I do not uphold Mr S's complaint and no further action is required by Dalriada.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr S's complaint is about Dalriada's management of the Scheme. He complains about the length of time its investigations are taking, the legal fees being deducted from the Scheme, not being given correct or up to date information and decisions being made by Dalriada without his authority.

## Background information, including submissions from the parties

4. Mr S transferred his accrued benefits from his existing pension arrangement to the Scheme, which had been established as an occupational pension scheme in August 2011 by Clarendon Hill Investments Ltd. The Scheme originally had two individual trustees. The money transferred to the Scheme was invested by the trustees mainly in preference shares of Hedge Capital Investment Group plc (HCIG) which loaned money to Hedge Capital Investments Ltd (HCIL), the manager of the Scheme investments. HCIL made loans to a related company Hedge Capital Ltd (HCL) which in turn made unsecured loans to individual Scheme members. These companies were controlled by a close associate of the two trustees.
5. On 28 March 2012 the Pensions Regulator exercised its powers under sections 7 and 9 of the Pensions Act 1995 to appoint Dalriada as independent trustee of the Scheme and to allow all the Scheme assets to be vested in, assigned to and transferred to Dalriada. This was because the Pensions Regulator had formed the view that the Scheme was a pension liberation scam. Dalriada's appointment was confirmed in

November 2012 following a compulsory review by the Pensions Regulator's Determinations Panel.

6. Under the terms of its appointment, Dalriada's fees and expenses were to be paid out of the Scheme resources.
7. Dalriada received legal advice that the investments made in HCIG were probably void and in breach of trust, and the loans to members were liable to tax charges under the Finance Act 2004 as unauthorised payments.
8. Dalriada took control of the cash in the trustee bank accounts and the HCIG preference share certificates. Dalriada commenced legal action against the former trustees of the Scheme and the Hedge group, claiming that it had a proprietary claim over the assets of the Hedge companies. In April 2012 Dalriada obtained a freezing injunction over the assets of the former trustees, HCIG, HCIL and HCL.
9. It became clear to Dalriada during its investigation that although the members had been told that the Scheme investments would give a guaranteed annual return of 3%, those investments were illiquid and poorly diversified. They included unsecured, interest only loans, an iPhone app, investments in Sustainable Wealth Group promoted by Forensic Review (both companies had subsequently been dissolved) and an unsuccessful theatre production based on ITV's Coronation Street.
10. In November 2012 a private court hearing authorised Dalriada to continue its proposed litigation process, on confidential terms. Dalriada agreed to stay its application for summary judgment in order to take part in mediation with the former trustees and the Hedge companies in March 2013, in an attempt to reach a negotiated settlement.
11. Non-binding heads of terms were agreed with the Hedge companies in 2013, with a view to putting them into a full settlement agreement later that year, but the negotiation process dragged on until Autumn 2016 due to various complications. Under the settlement it was agreed that Dalriada would take ownership of the Hedge companies excluding HCL; KPMG would be appointed as administrator of HCL, and all legal action was to be discontinued and agreement reached on paying costs to Hedge's legal advisers. In May 2017 a private court hearing approved the intended settlement.
12. HCIG and HCIL went into voluntary liquidation on 27 November 2017, and KPMG was appointed as liquidator of both companies on 8 December 2017. Dalriada then worked with KPMG to ascertain what value each company had.
13. Following its appointment, Dalriada made Scheme documents available for download by members. It also issued a series of announcements, dated as follows, to inform them of recent developments and proposed next steps:-
  - 2 April 2012
  - 29 June 2012

- 31 August 2012
- 1 November 2012
- 2 November 2012
- 6 November 2012
- 13 November 2012
- 26 November 2012
- 15 February 2013
- 23 May 2013
- July 2014
- September 2015
- April 2016
- April 2018.

14. Dalriada also published and updated a FAQ document.
15. After discussions with us, Mr S asked Dalriada, on 20 November 2017 to consider his complaint under the Scheme's internal dispute resolution procedure (IDRP). His complaint mainly concerned the level and accuracy of communications from Dalriada, and Dalriada's failure to obtain members' consents to its decisions regarding the Scheme.
16. Dalriada sent a letter to Mr S on 6 April 2018, referring to its various announcements and explaining the background and current position. It said: it could not yet place a value on the Scheme assets; after meeting with KPMG it would update members again about progress in determining the value of the remaining assets; and it had appealed against a significant tax charge imposed on the Scheme by HM Revenue & Customs.
17. Dalriada said it had taken reasonable steps to communicate with members; there were costs associated with issuing announcements, so it would look to issue them only when there was something material on which to update members. Dalriada explained that as Scheme trustee it did not require authorisation from the members when making decisions about the Scheme. Dalriada denied any suggestion that it had lied to Mr S, and explained that details of the discussions about the settlement agreement were "without prejudice" so could not be shared publicly.
18. We accepted Mr S's complaint for investigation in July 2018, as an IDRP had not been completed. He complained that: (i) Dalriada was taking too long to retrieve his money; (ii) Dalriada had not obtained his consent to its decisions; (iii) despite his

numerous phone calls Dalriada had not kept him informed properly, and had given him false information, causing him stress; (iv) he was not informed of KPMG's involvement previously; (v) Dalriada had been incompetent and had run up legal fees exceeding £1m without his consent; and (vi) several of his phone calls asking for information had been terminated abruptly by Dalriada.

19. In response, Dalriada told us that on its appointment it had inherited a complex and difficult situation that it was working to resolve. It went to court to get a freezing order as soon as it could after its appointment; the other parties had fought against its legal claims so it sought a settlement in order to save further costs. It had issued a lot of announcements to members but because of the publication costs, payable out of the Scheme, it did so only when there was something material to report. Since the April 2016 announcement was issued, its dedicated website and email/phone helpline had remained open for enquiries, and Mr S had been in frequent contact ("upwards of 100 separate occasions since our appointment"). It had explained to Mr S in 2014 that it was entitled to end his phone calls that were aggressive or abusive.
20. It understood the frustration that progress was slow but, unfortunately, there was a delay in receiving a report from KPMG because KPMG had disbanded its relevant team, the only Scheme asset likely to have any significant value was the loan book, which gave rise to a number of issues to be resolved if members were required to repay their loans out of their pension pots. Dalriada did not need member authorisation for making its decisions as trustee.
21. It was not looking to drag out matters or create unnecessary work in order to incur additional fees. It had not lied to Mr S, the discussions about a proposed legal settlement were "without prejudice", so that limited what Dalriada could tell members at the time.

## **Adjudicator's Opinion**

22. Mr S's complaint was considered by one of our Adjudicators who concluded that no further action was required by Dalriada. The Adjudicator's findings are summarised below:-
  - More than six years had passed since Dalriada was appointed by the Pensions Regulator as trustee of the Scheme, and Mr S was still unclear about the value of his pension benefits in the Scheme.
  - Mr S's frustration was understandable. However, administering a pension scheme that was previously used as a vehicle for a scam was a complex matter. Dalriada had to go to court on several occasions, firstly to obtain a freezing order so that liquid investments would not be dissipated further, and that inevitably incurred legal costs; these needed to be met from the Scheme. The settlement agreement that was negotiated, designed to save further legal costs, had to be approved by the court. As Scheme trustee, Dalriada needed to obtain legal and other professional advice on various matters, and was entitled to meet

these costs out of the Scheme. It did not need to obtain members' consent for doing this.

- Following the liquidation of the Hedge companies, an important step in the overall process, Dalriada had to rely on KPMG as administrator to trace the Scheme assets so that members' funds could be recovered and quantified, before they could be secured outside the Scheme. KPMG's appointment was first mentioned by Dalriada in the announcement it issued in April 2018. The Adjudicator agreed with Mr S that Dalriada could have reported this earlier to members, but sympathised to some extent with Dalriada's comment that issuing announcements to members cost money, payable out of the Scheme, so it was reasonable to issue announcements more sparingly after the initial batch was issued in 2012/2013.
- Nonetheless, the Adjudicator considered that it would have been helpful if Dalriada had issued a general update to members between April 2016 and April 2018, so that there was not a gap of two years, even if there had been no significant developments to report during that period. However, it was noted that Dalriada continued to operate a website, email and telephone enquiry lines, so Scheme members could contact Dalriada at any time and ask questions. It was clear from our file that Mr S was a keen user of the telephone, and made good use of those facilities. Therefore, the Adjudicator did not consider that Mr S was materially disadvantaged by the level of communications that Dalriada provided.
- The Adjudicator had not seen evidence of any false information being given by Dalriada and accepted that during "without prejudice" negotiations there was a limit to which Dalriada could inform the members of the ongoing discussions.
- If the Pensions Ombudsman were to find that Dalriada's frequency and quality of communications was so inadequate that it amounted to maladministration, any award that he would make against Dalriada for non-financial injustice would effectively be payable out of the Scheme, and that would further deplete the Scheme assets. The minimum award that the Pensions Ombudsman made nowadays for significant distress and inconvenience was £500. In the circumstances, the Adjudicator did not consider that Dalriada's level of communication, and its failure to issue an announcement during 2017, would justify the Pensions Ombudsman making a financial award to Mr S.
- It was therefore the Adjudicator's opinion that this complaint should not be upheld.

23. Mr S did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr S and Dalriada provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr S and Dalriada for completeness.

24. Mr S disputed that he had been in contact with Dalriada about one hundred times and reiterated that Dalriada had given him false information. He understood that Dalriada had agreed to make a compensation payment to another member of the Scheme and queried why he had not been treated in the same manner. He thought that Dalriada should have sought permission to go to court and appoint solicitors, and

that Dalriada should have mentioned earlier KPMG's role as company liquidator. He also queried why Dalriada did not inform the police or fraud agencies about the scam, and did not try to freeze the Scheme assets much earlier.

25. Dalriada pointed out that soon after its appointment it had taken legal action against the previous trustees and the Hedge group, claiming breach of trust and knowingly receiving monies in breach of trust. It had obtained a freezing order, but it was not clear then whether any criminality had been involved. Dalriada was aware that some members of the Scheme had contacted the police, but was not aware of any successful prosecutions. Dalriada also said, that in its telephone conversations with Mr S, it had outlined the aims of the proposed settlement, and explained the need to liquidate the Hedge companies in order to recover any remaining assets; the liquidators might then be able to bring claims against the company directors.

### **Ombudsman's decision**

26. I sympathise with Mr S's predicament, and his frustration that following Dalriada's appointment as trustee in 2012, it is still not clear whether any of his pension funds can be retrieved. However, it was necessary for Dalriada to go through various legal processes, and these all took time. Dalriada obtained a freezing order in April 2012, only one month after its appointment as trustee. A mediation process commenced in 2013 but the proposed settlement was not approved until 2017. I am satisfied that Dalriada did not drag out the process more than was necessary, as it had to rely on the co-operation of various other parties.
27. After its appointment, it was necessary for Dalriada appoint solicitors to advise it on the legal issues arising, and to conduct the litigation and settlement processes on its behalf. Such appointments and processes do not require the consent of Scheme members. It is standard practice for the professional fees incurred by trustees to be reimbursed out of the relevant scheme, and that also does not require member consent.
28. KPMG was appointed as company liquidator in December 2017 and will be liaising with Dalriada as appropriate, if, and when, any Scheme assets can be traced, so that the Scheme members can be informed. KPMG's appointment was first mentioned in Dalriada's announcement of April 2018. Dalriada could have informed the Scheme members several months earlier, but I do not consider that delay to be significant.
29. Although Mr S has said that Dalriada gave him false information, he has not provided any satisfactory documentary evidence to support his case. During the confidential stages of the litigation and settlement processes there was not much detail that Dalriada could divulge to members. The announcement dated July 2014, issued to members, explained that the settlement details were "without prejudice". This restricted what Dalriada could say on the telephone.
30. Mr S also complained that Dalriada should have informed the police or fraud agencies at an early stage. However, it should be noted that the Pensions Regulator

which appointed Dalriada as trustee of the Scheme, became part of “Project Bloom”, a multi-agency taskforce set up by the National Crime Agency and other government organisations to tackle pension liberation scams. Therefore, it is reasonable to assume that the police and Serious Fraud Office would have been aware of the matter. Furthermore, Mr S could have contacted these bodies himself.

31. Lastly, the fact that Dalriada has agreed to make an award to another Scheme member who contacted it does not oblige it to make a similar award to Mr S; that payment was made on a discretionary basis without any legal obligation.
32. Therefore, I do not uphold Mr S’s complaint.

**Anthony Arter**

Pensions Ombudsman  
4 June 2019